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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,713	03/08/2001	Klaus Krinner	F-6818	7592

7590 05/07/2002  
Jordan and Hamburg  
122 East 42nd Street  
New York, NY 10168

EXAMINER

LE, TAN

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 05/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/762,713

Applicant(s)

Krinner et al.

Examiner

Tan Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Mar 8, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Mar 8, 2001 is/are a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some\* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 6) ☐ Other:

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### **DETAILED ACTION**

1. This is the first office action for application serial number 09/762,713, Device for Fastening Poles, Posts, Masts Or The Like in The Ground and Method For Manufacturing a Fastening Device, filed on 3/08/01. This application contains 19 claims numbered 1-19.
2. The preliminary amendment filed on 2/12/01 has been entered.

### ***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

4. The disclosure is objected to because the section headings are missing. Appropriate correction is required.

The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in uppercase, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

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- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
  - 1. Field of the Invention.
  - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (I) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

5. The disclosure is objected to because Applicant claims the "three or four fin-like surface elements are attached to the circumference of the basic body at an essentially equal distance from one another" as claimed in claims 4 and 14 but fails to show support in the specification.

Appropriate correction is required.

#### *Abstract*

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a *single paragraph* on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means"

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and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Drawings***

7. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the three or four fin-like surface elements are attached to the circumference of the basic body at an essentially equal distance from one another" as claimed in claims 4 and 14 must be shown or the features canceled from the claim. No new matter should be entered.

### ***Claim Rejections - 35 USC § 112***

8. Claims 14-19 are rejected under 35 U.S.C. 112, ***first paragraph***, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

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Applicant claims the features such as "three or four fin-like surface elements are attached to the circumference of the basic body at an essentially equal distance from one another".

However, in the drawings and the specification do not show these claimed features.

9. Claims 1-19 are rejected under 35 U.S.C. 112, *second paragraph*, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 -9 provide for the use of a method for manufacturing a device for fastening poles, posts, masts or the like in the ground, in particular a ground peg, but, since the claims do not set forth any steps involved in the method, it is unclear what method applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 1-9 are also rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Regarding claims 1, 2, 10 and 12, the phrase "or the like" renders the claims indefinite because the claims include element not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

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Claims 10 and 17 recite the limitations "the first and second part portions". These limitations lack antecedent basis.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-12 and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,457,918 to Plourde.

Regarding claims 10-12, Plourde discloses an anchoring device noting Figs. 1 and 4, which comprises a basic body (10) having an anchoring portion (14, 18) and a holding portion (22, 12); the anchoring portion being designed as a cone-shaped, essentially acute-angled displacement body which has at least two part portions having different cone angles and bearing at least in one of the two part portions a screw-shaped or spiral -shaped thread (52), a second part portion following a first cone-shaped part portion in the screwing-in direction having a greater cone angle, wherein the anchoring portion is formed of in one piece from a blank which is hammered from a cylindrical tubular part, and the holding portion and the essentially anchoring portion are hollow throughout.

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Regarding claims 15-19, Plourde also discloses the holding portion and the anchoring portion are attached to each other in one piece and the difference in cone angles of the first and the second part portions of the anchoring portion lies about between 1-3 degrees; the anchoring portion also has a tip (50) at an end and a bore in its lower first part portion in the direction of insertion into ground.

Claims 12-19 are also rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,524,855 to Lesar.

Regarding claims 12-14, Lesar discloses an anchoring device noting Figs. 4-7, which comprises a basic body (10) having an anchoring portion (34, 36) and a holding portion (12); the anchoring portion being designed as a cone-shaped, essentially acute-angled displacement body which has at least one cone-shaped part portion, wherein the anchoring portion is formed in one piece from a blank which is hammered from a cylindrical tubular part; the holding portion and the essentially anchoring portion are hollow throughout; and the basic body also has at least four fin-like surface elements (20) that are attached to the circumference of the basic body at an equal distance from one another.

Regarding claims 15-19, Lesar also discloses the holding portion and the anchoring portion are attached to each other in one piece and the difference in cone angles of the first and the second part portions of the anchoring portion lies about between 1-3 degrees; the anchoring portion also has a tip (34) at an end and a bore in its lower first part portion in the direction of insertion into ground.



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***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6,032,880 to Verrills, et al.

2,103,948 to Jones

2,441,109 to Carlson

6,234,444 to Haddad

4,832,304 to Morgulis

5,358,209 to Ward

The above patents disclose various types of anchoring devices particularly for posts, umbrellas or the like.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Tan Le, whose telephone number is ( 703) 305-8244. The Examiner can normally be reached on Tuesday through Friday and on alternate Monday from 8:00 A.M. to 5:30 P.M. The fax numbers for the Group are ( 703) 305-3597 or (703) 305-7687 (for formal communication), and ( 703) 308-3519 (for informal communication).

Any inquiry of a general nature or relating to the status of this Application should be directed to the Group receptionist at 703.308.2168.

  
**TAN LE**  
**PATENT EXAMINER**

  
**LESLIE A. BRAUN**  
**SUPERVISORY PATENT EXAMINER**

09762713  
April 30, 2002.